REMARKS

Claims 11-29 remain pending in the present application. In response to the Office Action mailed November 30, 2004, Applicants respectfully request that the Examiner consider the following comments.

Rejection of Claims 11-29 under 35 U.S.C. § 103(a)

Claims 11-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,349,001 to Spitzer ("Spitzer") in view of U.S. Patent No. 6,311,155 to Vaudrey et al. ("Vaudrey"). Applicants respectfully traverse this rejection because Spitzer, alone or in combination with Vaudrey, fails to disclose, teach or suggest the elements of the claims.

Spitzer discloses an industrial safety assembly which includes a telecommunications receiver carried inside of an eyeglass, a telecommunications transmitter carried inside of the eyeglass, a battery carried by the eyeglass, a pair of earphones and a microphone is connected to an orbital of the eyeglass. As noted by the Examiner, Spitzer fails to teach an MP3 storage device.

Applicants also wish to point out that Spitzer fails to teach a system in which audio storage and retrieval circuitry is supported by the frame of the eyeglass. In fact, Spitzer does not disclose any memory device for audio or video storage and playback carried by any portion of the eyeglass frame.

Spitzer explains that the Eyeglass Interface System may be connected to additional components located within an external plug-in module 1001 located on a strap 1002 behind a user's head or placed in a pocket or worn on a belt. Id. at col. 9, ll. 55-57, col. 9, l. 65-col. 10, l. 4, and Figure 20. The only storage devices disclosed by Spitzer as possibly providing playback capability are tape recorders, recordable digital video disk systems, and recordable compact disk systems, (see Spitzer, col. 10, ll. 65-67) all of which are clearly too large to be placed in an eyeglass frame. Rather, one or ordinary skill in the art, in light of the Spitzer disclosure, would understand that Spitzer suggests that such playback capable devices would be placed in the module 1001 hanging from the strap 1002.

Vaudrey is directed to a method and hardware for providing multiple users with voice-to-remaining audio (VRA) ratio adjustment capability. More specifically, Vaudrey discloses a device requiring two separate receivers, two separate amplifiers, and a mixer, all of which must

be incorporated into the device worn by the user. These devices allow a user to adjust the ratio of the volume of voice to volume of background sound of a movie or other audio playback.

For example, as noted in col. 8, ll. 15-31 with reference to Figure 4, the VRA system of Vaudrey must include the following: (1) a PLD receiver 231, (2) a separate variable gain amplifier 229 that can be separately adjusted, (3) another variable gain amplifier 230 that can be separately adjusted, (4) an adder 228 for summing the signals from the amplifiers 229 and 230, (5) a gain amplifier, and (6) a device for allowing the user to adjust the ratio of voice sounds from the amplifier 229 relative to the background sounds from the amplifier 230. By adjusting the amplifiers 229, 230, the user can adjust the ratio of the volume of voice relative to the volume of background sounds.

Vaudrey discloses that the VRA system can be used in conjunction with a variety of personal listening devices (PLDs), including headphones, hearing aids, cochlear implants, assisted listening devices, eyewear or headwear that incorporates speakers. It was the Examiner's position that it would have been obvious to incorporate the MP3 player of Vaudrey into the eyeglass of Spitzer.

Firstly, Applicants wish to point out that one of ordinary skill in the art would initially understand that Vaudrey does not suggest that all of the electronics required for the VRA system could be incorporated into every device identified as a possible PLD. For example, one of ordinary skill in the art would not assume that Vaudrey suggests that the additional receiver, amplifiers and adder could be incorporated into a cochlear implant. Vaudrey also fails to disclose where a user operable switch would be placed on a cochlear implant for adjusting the voice to remaining sound ratio.

Further, Vaudrey discloses that some of the electronics could be placed on the following: (1) A portable **"belt box"** that receives and transmits an adjusted and/or controlled signal to an acoustic transducer, (2) a **separate audio decoder** that can be used in conjunction with existing home theater hardware to provide additional VRA adjustments for multi-user applications, and (3) **remote commander** with VRA adjustment capability. Vaudrey col. 14, ll. 47-58. Thus, Applicants submit that where Vaudrey suggests that an MP3 playback device can be combined with a PLD, one of ordinary skill in the art would not assume that Vaudrey was suggesting that all of the VRA electronics and the MP3 device, including any MP3 format memory devices, could be incorporated into hearing aids, cochlear implants or eyewear. Rather, one of ordinary

skill in the art would assume that another housing, such as the (1) **"belt box"**, (2) **separate audio decoder,** or (3) **remote commander** would be used to house the additional electronics.

Further, as noted in the previous responses, Vaudrey fails to disclose or suggest placing a memory and playback device, including an MP3 format memory device, inside of an eyeglass frame. Vaudrey similarly fails to teach or suggest supporting a memory and playback device, such as an MP3 format memory device and retrieval circuitry, from an eyeglass frame.

Spitzer also fails to teach or suggest supporting an MP3 storage and playback device with the frames of eyeglasses. Further, Spitzer fails to disclose or suggest supporting any type of memory device in the frames of eyeglasses.

In contrast, the structure of the device of independent Claim 11 includes an MP3 format memory device carried inside of an eyeglass frame. As discussed above, the Spitzer and Vaudrey references fail to disclose or suggest any audio storage and playback device, including an MP3 player, carried inside of an eyeglass frame. Therefore, even if one were to combine the teachings of Spitzer with Vaudrey, the combination would still fail to teach an MP3 format memory device carried inside of an eyeglass frame.

Because the references cited by the Examiner do not disclose, teach or suggest an MP3 format memory device carried inside of an eyeglass frame, the Applicants assert that Claim 11 is not obvious in view of the Spitzer and Vaudrey references. The Applicants therefore respectfully submit that Claim 11 is patentably distinguished over the cited references and the Applicants respectfully request allowance of Claim 11.

Dependent Claims 12-16 which depend from Claim 11 are also patentable, not only because they depend from Claim 11, but also on their own merit. Accordingly, Applicants respectfully request allowance of Claims 12-16.

The structure of the device of independent Claim 17 includes a means for storing music in an MP3 format inside of an eyeglass frame. For the same reasons articulated above with respect to Claim 11, Claim 17 is not obvious in view of the Spitzer and Vaudrey references. The Applicants therefore respectfully submit that Claim 17 is patentably distinguished over the cited references and the Applicants respectfully request allowance of Claim 17.

Dependent Claims 18-19 are also patentable, not only because they depend from Claim 17, but also on their own merit. Accordingly, Applicants respectfully request allowance of Claims 18-19.

Claim 20 recites, among other recitations, "an MP3 storage enabled eyeglass, comprising . . . an eyeglass frame, adapted to be carried by the head of the wearer. . . . an MP3 format memory device directly carried by the eyeglass frame." As noted above, Vaudrey and Spitzer fail to teach or suggest an eyeglass including an MP3 format memory device directly carried by the eyeglass frame. Thus, Claims 17 clearly and nonobviously defines over the Vaudrey and Spitzer references. Additionally, Applicants submit that Claims 21 – 26 also define over the Vaudrey, et al. and Spitzer references, not only because they depend from Claim 20 but also on their own merit.

Finally, Claim 27 recites, among other recitations, "an MP3 storage enabled eyeglass, comprising . . . . an eyeglass frame, adapted to be carried by the head of the wearer . . . means for storing this like an MP3 format carried directly by the eyeglass frame." As noted above, the Vaudrey and Spitzer references fail to teach or suggest an eyeglass frame having an MP3 format storage device disposed in the eyeglass frame. Thus, Applicant submits that Column 27 clearly and nonobviously defines over the Vaudrey and Spitzer references.

Additionally, Applicants submit that Claims 28 and 29 also define over the Vaudrey and Spitzer references, not only because they depend from Claim 27 but also on their own merit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped

issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: _____

Michael A. Guiliana
Registration No. 42,611
Attorney of Record
Customer No. 20,995
(949) 760-0404

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